

MANATT, PHELPS & PHILLIPS, LLP
EDWARD G. BURG, Bar No. 104258 eburg@manatt.com
VIRAL MEHTA, Bar No. 261852 ymehta@manatt.com
2049 Century Park East, Suite 1700
Los Angeles, CA 90067
Telephone: (310) 312-4000

Attorneys for Plaintiffs

NORA FRIMANN, City Attorney (Bar No. 93249)
ARDELL JOHNSON, Assistant City Attorney (Bar No. 95340)
MARGO LASKOWSKA, Sr. Dep. City Attorney (Bar No. 187252)
200 East Santa Clara Street, 16th Floor
San Jose, CA 95113-1905
Telephone: 408-535-1900
Email: cao.main@sanjoseca.gov

Attorneys for Defendant CITY OF SAN JOSE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA SAN JOSE DIVISION

FFV COYOTE LLC, a Washington limited liability company; EMC7, LLC, a Washington limited liability company; ERIC F. BONETTI; DAVID R. BONETTI; GLEN C. KRAL and SUSAN S. KRAL, as Trustees of the Kral 1994 Trust; BENSON GROUP LLC, a California limited liability company; JEAN BEU, as Trustee of the Jean Beu California Property Trust; LEE LESTER/BAILEY LLC, a California limited liability company; and F.R. LESTER CAPITAL, LLC, a California limited liability company

Plaintiffs,

vs.

CITY OF SAN JOSE, a municipal corporation; DOES 1 through 10,

Defendants.

Case No. 5:22-cv-00837-VKD

STIPULATION RE DISMISSAL

[FED. R. CIV. PRO. 41(a)(1)]

STIPULATION RE DISMISSAL

[FED. R. CIV. PRO. 41(a)(1)]

Plaintiffs FFV Coyote LLC, EMC7, LLC, Eric F. Bonetti, David R. Bonetti, Glen C. Kral and Susan S. Kral, as Trustees of the Kral 1994 Trust, Benson Group LLC, Jean Beu, as Trustee of the Jean Beu California Property Trust, Lee Lester/Bailey LLC, and F.R. Lester Capital, LLC (collectively “Plaintiffs”), on the one hand, and Defendant City of San Jose (“the City”), on the other, stipulate as follows:

WHEREAS Plaintiffs filed their Complaint in this action on February 9, 2022 (Dkt. No. 1); and

WHEREAS Plaintiffs’ Complaint alleged three claims for relief: (1) Taking Under the Fifth Amendment; (2) For Violation of Equal Protection Under the Fourteenth Amendment; and (3) For Violation of Due Process Under the Fourteenth Amendment; and

WHEREAS, on March 25, 2022, the City filed its Motion to Dismiss the Complaint in its entirety (Dkt. No. 14);

WHEREAS, on October 26, 2022, the Court issued its Order Granting in Part and Denying in Part Defendant’s Motion to Dismiss (Dkt. No. 28). The Court dismissed with leave to amend Plaintiffs’ Third Claim for Relief, For Violation of Due Process Under the Fourteenth Amendment, and denied the Motion to Dismiss as to Plaintiffs’ First Claim for Relief for a Taking Under the Fifth Amendment and Plaintiffs’ Second Claim for Relief For Violation of Equal Protection Under the Fourteenth Amendment; and

WHEREAS the City filed its Answer to the Complaint on January 9, 2023 (Dkt. No. 39);

WHEREAS the City’s Answer alleges, in ¶10 of its Affirmative Defenses, that Plaintiffs’ claims are barred by the doctrine of ripeness; and

WHEREAS factual developments since Plaintiffs filed their Complaint have rendered Plaintiffs’ claims unripe under case authority including the final decision prong of *Williamson County Regional Planning Comm’n v. Hamilton Bank*, 473 U.S. 172

(1985), partially overruled on other grounds by *Knick v. Township of Scott*, 139 S. Ct. 2162 (2019), and other cases; and

WHEREAS Plaintiffs desire to have their Complaint dismissed under Fed. R. Civ. Proc. 41(a) without prejudice on the ground of ripeness so that they may proceed to ripen their claims; and

WHEREAS Plaintiffs have therefore requested the City to stipulate to a dismissal under Fed. R. Civ. Proc. 41(a) without prejudice on the ground of ripeness, and the City has agreed to so stipulate as set forth herein;

THEREFOR, Plaintiffs and the City hereby stipulate as follows:

1. The remaining Claims for Relief in Plaintiffs' Complaint—Plaintiffs' First Claim for Relief for a Taking Under the Fifth Amendment and Plaintiffs' Second Claim for Relief For Violation of Equal Protection Under the Fourteenth Amendment—shall be, and hereby are, dismissed without prejudice under Fed. R. Civ. Proc. 41(a)(1)(A)(ii) on the grounds of ripeness.

2. Plaintiffs and the City shall each bear their respective attorneys' fees and costs incurred in the prosecution or defense of this lawsuit.

3. The signatories to this Stipulation represent that they are authorized to sign on behalf of, and to bind, the parties for which or for whom they are signing, and that all required approvals for their authority to sign and to bind have been obtained.

PLAINTIFFS:

Dated: April 4, 2023

FFV COYOTE, LLC
a Washington limited liability company

By: /s/ Tom Foster

Name: Tom Foster

Its: Member

1 Dated: April 12, 2023

EMC 7, LLC

a Washington limited liability company

2
3 By: /s/ William Foster

Name: William Foster

4 Its: Managing Member

5
6
7 Dated: April 4, 2023

/s/ Eric F. Bonetti

ERIC F. BONETTI, an individual

8
9
10 Dated: April 4, 2023

/s/ David R. Bonetti

DAVID R. BONETTI, an individual

11
12 Dated: April 4, 2023

THE KRAL 1994 TRUST

13
14 By: /s/ Glenn C. Kral

Glenn C. Kral, Trustee

15
16 By: /s/ Susan S. Kral

Susan S. Kral, Trustee

17
18
19 Dated: April 3, 2023

BENSON GROUP, LLC

a California limited liability company

20
21 By: /s/ Peter R. Benson

Name: Peter R. Benson

22 Its: Manager

23
24 Dated: April 4, 2023

**THE JEAN BEU CALIFORNIA
PROPERTY TRUST**

25
26 By: /s/ Jean Beu

Jean Beu, Trustee

1 Dated: April 3, 2023

LEE LESTER/BAILEY LLC
a California limited liability company

2
3 By: /s/ Linda L. Lester

4 Name: Linda L. Lester

Its: Manager

5 Dated: April 3, 2023

F.R.LESTER CAPITAL, LLC
a California limited liability company

6
7 By: /s/ Fred R. Lester

8 Name: Fred R. Lester

Its: General Partner

9
10 THE CITY:

11
12 Dated: March 30, 2023

THE CITY OF SAN JOSE

13 By: /s/ Nora Frimann

14 Name: Nora Frimann

15 Its: City Attorney

16
17 Approved as to form:

18
19 Dated: April 6, 2023

/s/ Edward G. Burg

EDWARD G. BURG

20 MANATT, PHELPS & PHILLIPS, LLP

21 Counsel for Plaintiffs

22 Dated: March 30, 2023

/s/ Margo Laskowska

23 MARGO LASKOWSKA

24 OFFICE OF THE CITY ATTORNEY

25 Counsel for Defendant

26 CITY OF SAN JOSE

FILER'S ATTESTATION

I am an ECF User. Pursuant to Civil L.R. 5-1(h)(3), I attest that each of the other Signatories to this document have concurred in the filing of the document.

/s/ Edward G. Burg
EDWARD G. BURG

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